

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

BRADLEY ILES

Plaintiff,

v.

**COGENT COMMUNICATIONS,
INC., d/b/a COGENT
COMMUNICATIONS**

Defendant.

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§

CIVIL ACTION NO. 1:23-cv-00229

STATE COURT PLEADINGS FILED WITH DEFENDANT’S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1446(a), certified copies of the following documents are filed with Defendant’s Notice of Removal:

1. Docket sheet for Case No. 2023CI01354 in the 37th Judicial District Court of Bexar County, Texas;
2. Plaintiff’s Original Petition;
3. Citation – Cogent Communications, Inc.; and
4. Defendant’s Answer.

Respectfully submitted,

By: /s/ Jheris R. Jordan
Jheris R. Jordan
Texas Bar No. 24097905
Jheris.Jordan@jacksonlewis.com
JACKSON LEWIS P.C.
93 Red River Street, Suite 1150
Austin, Texas 78701

Telephone: (512) 362-7100

Facsimile: (512) 362-5574

ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served on the following counsel of record on the 27th day of February 2023 via email and the court's e-filing system.

Dennis L. Richard
LAW OFFICE OF DENNIS L. RICHARD
14255 Blanco Road
San Antonio, Texas 78216
Email: dennislrichardlaw@gmail.com

ATTORNEY FOR PLAINTIFF

/s/ Jheris R. Jordan
Jheris R. Jordan

4884-2201-9922, v. 1

37th District Court

Case Summary

Case No. 2023CI01354

Bradley Iles VS Cogent Communications, Inc.§
§
§Location: **37th District Court**
Judicial Officer: **37th, District Court**
Filed on: **01/23/2023**

Case Information

Case Type: EMPLOYMENT-
DISCRIMINATIONCase Status: **01/23/2023 Pending**

Assignment Information

Current Case AssignmentCase Number 2023CI01354
Court 37th District Court
Date Assigned 01/23/2023
Judicial Officer 37th, District Court

Party Information

Defendant Cogent Communications, Inc.

Events and Orders of the Court

01/23/2023 New Cases Filed (OCA)

01/23/2023 PETITION

01/23/2023 **Citation**
Cogent Communications, Inc.
Served: 01/30/202301/31/2023 RETURN OF SERVICE - SUCCESSFUL
COGENT COMMUNICATIONS, INC, DOING BUSINESS AS COGENT COMMUNICATIONS

Case Number: 2023CI01354

Bradley Iles VS Cogent Communications, Inc.
 (Note: Attached Document May Contain Additional
 Litigants)

IN THE 37TH DISTRICT COURT
 BEXAR COUNTY, TEXAS

CITATION

"THE STATE OF TEXAS"

Directed To: **COGENT COMMUNICATIONS, INC. DOING BUSINESS AS COGENT COMMUNICATIONS
 BY SERVING ITS FOUNDER AND CEO DAVE SCHAEFFER**

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00am on the Monday next following the expiration of twenty days after you were served this CITATION and PETITION a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org" Said **Original Petition And Jury Demand** was filed on this the 23rd day of January, 2023. ISSUED UNDER MY HAND AND SEAL OF SAID COURT on this the 23rd day of January, 2023.

DENNIS L. RICHARD
ATTORNEY FOR PLAINTIFF
 14255 Blanco Road
 San Antonio, TX 78216



Gloria A. Martinez
Bexar County District Clerk
 101 W. Nueva, Suite 217
 San Antonio, Texas 78205
 By: /s/ Ana Cortijo
Ana Cortijo, Deputy

BRADLEY ILES VS COGENT COMMUNICATIONS, INC.

Case Number: 2023CI01354
 37th District Court

Officer's Return

I received this CITATION on the _____ day of _____, 20____ at _____ o'clock ____M. and () executed it by delivering a copy of the CITATION with attached **ORIGINAL PETITION AND JURY DEMAND** the date of delivery endorsed on it to the defendant _____ in person on the _____ day of _____, 20____ at _____ o'clock ____M.

at _____ City _____ State _____ Zip _____

or () not executed because _____.

Fees: _____ Badge/PPS #: _____ Date certification expires: _____

_____ County, Texas

BY: _____

OR: VERIFICATION OF RETURN (If not served by a peace officer) SWORN TO THIS _____

NOTARY PUBLIC, STATE OF TEXAS

OR: My name is _____, my date of birth is _____, and my address is _____ County.

I declare under penalty of perjury that the foregoing is true and correct. Executed in _____ County, State of Texas, on the _____ day of _____, A.D., _____.

WC

Declarant

2023CI01354

CAUSE NO. _____

BRADLEY ILES,
Plaintiff,

vs.

COGENT COMMUNICATIONS,
INC., d/b/a COGENT
COMMUNICATIONS
Defendant.

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IN THE DISTRICT COURT

___ JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION AND JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, BRADLEY ILES , hereinafter referred to as Plaintiff or "Iles", complaining of and about COGENT COMMUNICATIONS, INC., d/b/a COGENT COMMUNICATIONS, hereinafter referred to as Defendant or "Cogent" and for cause of action files this his Plaintiff's Original Petition, showing to the Court as follows:

I.

PARTIES AND SERVICE

1. Plaintiff, Iles, is a citizen of the United States and the State of Texas and resides in the State of Texas.

2. Defendant, Cogent, is a Domestic Corporation, headquartered in Washington D.C. and doing business throughout the State of Texas. This Defendant may be served with process by delivering a copy of Plaintiff's Original Petition to its Founder and CEO, Dave Schaeffer, by certified mail return receipt requested at 2450 N. Street, NW, Washington, D.C. 20037.

3. This is a Level III case.

II.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter and the parties to this

case. The Defendant routinely conducts business in Texas.

III.
JURY DEMAND

5. Plaintiff is requesting trial by jury and will tender the statutory jury fee.

IV.
AGENCY

6. Whenever in this petition it is alleged that the Defendant did any act or thing, it is meant that Defendant's officers, agents, servants, employees or representatives did such act or thing and that at the time such act or thing was done, it was done with the full authorization or ratification of or by Defendant and was done in the normal and routine course and scope of employment of Defendant's officers, agents, servants, employees or representatives.

V.
FACTS

7. This case is founded upon Defendant's violations of 42 U.S.C. Section 1981, as evidenced by the following acts of Race Discrimination and Retaliation for Opposing Race Discrimination. Iles, a member of the African American protected class, began his employment with Cogent on February 19, 2022. Plaintiff represented Defendant, a Tier 1 internet service provider, as a salesman. Iles successfully completed his daily duties as a salesman for Cogent and submitted a significant sale for Shield AI shortly before his termination. Daniel Soto was Plaintiff's supervisor. Soto and a co-worker, Thiago De Silvia, conspired to harass and discriminate against Iles by routinely cursing Plaintiff out and subjecting Iles to racial slurs. Both Soto and De Silvia used the "N-Word" in verbal exchanges with Plaintiff. Iles opposed the racial discrimination and met with Cogent HR Representative, Raghad Mohamed, to lodge an official complaint. The harassment by Soto included cursing Plaintiff out over the "Jabber Account" and text messaging Plaintiff

well into the evening, as late as 10:00 p.m. Soto even punished Plaintiff's working from home with a 103 degree fever after Mohamed had made the accommodation for Iles. Soto had a fellow salesman, Nick Contreras, III, take pictures of Iles while Soto was on leave with a knee injury so that Soto could call Plaintiff and criticize the clothes he wore and when he arrived in the office. Just 2 days before Plaintiff's retaliatory termination, Iles asked Soto for assistance with the Shield AI sale (one of the largest in the Houston Office). Soto balled up his fist and stood over Plaintiff in a menacing manner as if he was going to strike Iles. It so alarmed co-worker, Carol Murillo, that she tried to stand in between Plaintiff and Soto. Iles stated the obvious and asked Soto to step back, get out of my space and you (Soto) look like you are preparing swing on me. After Plaintiff's termination the Shield AI sale was given to another salesman and its believed the commission was split among Soto supporters who chose to ignore the harassment and discrimination that Soto visited upon Iles. In retaliation for opposing race discrimination and complaining to Cogent HR, Plaintiff was terminated on September 30, 2022.

8. This Court has jurisdiction over the subject matter and the parties to this case. Title 42, United States Code, Section 1981 states: "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other." Title 42, United States Code, Section 1981 establishes an independent cause of action against private, non-governmental actors like Cogent for discrimination and retaliation on the basis of opposing race discrimination.

~~When Iles went to Muhammad, he was Opposing Race Discrimination and all~~
Muhammad did was ignore the clear complaints of race discrimination.

VI.
DAMAGES

9. By reason of Defendant's acts and conduct, as herein alleged, Plaintiff has been damaged as follows:

a.) Compensatory damages (including emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-economic damages) allowed under 42 U.S.C. 1981.

b.) Economic damages in the form of lost back pay and lost fringe benefits in the past. Economic damages, in the form of lost wages and fringe benefits that will, in reasonable probability, be sustained in the future.

c.) Attorney's fees pursuant to applicable statutes.

d.) Punitive damages for Defendant engaging in unlawful intentional employment practices and engaging in discriminatory practices with reckless indifference to the protected rights of an aggrieved individual like Bradley Iles. Said conduct also amounts to a conscious indifference to the rights and welfare of Iles. Plaintiff also seeks punitive damages under his claims for violation of Section 1981 of the Civil Rights Act of 1866.

10. Pursuant to Rule 47 of the Texas Rules of civil Procedure, Plaintiff hereby seeks monetary relief over \$250,000.00 but not more than \$1,000,000.00, including costs, expenses, pre- and post-judgment interests, and attorney's fees. Plaintiff further requests that the non-expedited rules apply in this case.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon final trial of this cause, Plaintiff has and recovers of and from the Defendant actual damages and punitive damages in a sum within the jurisdictional limits of this Court, pre-and post-judgment interest as allowed by law, attorney's fees, costs of Court, and for such other and further relief, both general and special, at law or in equity, to which Plaintiff may show himself justly entitled.

Respectfully submitted,

___/s/ *Dennis L. Richard*___

Dennis L. Richard

SBN: 16842600

LAW OFFICE OF DENNIS L. RICHARD

14255 Blanco Road

San Antonio, TX 78216

Telephone: (210) 308-6600

Telecopier: (210) 308-6939

dennisrichardlaw@gmail.com

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 72018695

Status as of 1/23/2023 8:25 AM CST

Associated Case Party: Bradley Iles

Name	BarNumber	Email	TimestampSubmitted	Status
Dennis L. Richard		dennisrichardlaw@gmail.com	1/22/2023 5:14:48 PM	SENT
Maribel Susil		maribel.legal@outlook.com	1/22/2023 5:14:48 PM	SENT

Gloria A. Martinez
Bexar County District Clerk
Accepted By: Damian Avina
Bexar County - 37th District Court

PRIVATE PROCESS

Case Number: 2023CI01354

IN THE 37TH DISTRICT COURT
BEXAR COUNTY, TEXASBradley Iles VS Cogent Communications, Inc.
(Note: Attached Document May Contain Additional
Litigants)CITATION

"THE STATE OF TEXAS"

Directed To: **COGENT COMMUNICATIONS, INC. DOING BUSINESS AS COGENT COMMUNICATIONS
BY SERVING ITS FOUNDER AND CEO DAVE SCHAEFFER**

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00am on the Monday next following the expiration of twenty days after you were served this CITATION and PETITION a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org" Said Original Petition And Jury Demand was filed on this the 23rd day of January, 2023.
ISSUED UNDER MY HAND AND SEAL OF SAID COURT on this the 23rd day of January, 2023.

DENNIS L. RICHARD
ATTORNEY FOR PLAINTIFF
14255 Blanco Road
San Antonio, TX 78216Gloria A. Martinez
Bexar County District Clerk
101 W. Nueva, Suite 217San Antonio, Texas 78205
By: /s/ Ana Cortijo
Ana Cortijo, Deputy

BRADLEY ILES VS COGENT COMMUNICATIONS, INC.

Case Number: 2023CI01354
37th District CourtOfficer's Return

I received this CITATION on the 24th day of JAN, 2023 at 8:50 o'clock A M. and (☒) executed it by delivering a copy of the CITATION with attached ORIGINAL PETITION AND JURY DEMAND the date of delivery endorsed on it to the defendant Cogent Communications in person on the 30th day of JANUARY, 2023 at 4:27 o'clock P M.
at 2450 N. Street NW City Washington State DC Zip 20037
or () not executed because _____

Fees: _____ Badge/PPS #: psc2353 Date certification expires: 12-31-24

*By Certified mail

7022 2410 0001 8667 4826

BEXAR County, TexasBY: MC

OR: VERIFICATION OF RETURN (If not served by a peace officer) SWORN TO THIS _____

NOTARY PUBLIC, STATE OF TEXASOR: My name is MARIO V. Cordova my date of birth is 02-08-56 and my address is 3658 CANDLEHEAD LN, SAN ANTONIO TX 78244, BEXAR County.I declare under penalty of perjury that the foregoing is true and correct. Executed in District of Columbia County, State of Texas, on the 30th day of JANUARY, A.D., 2023.MC

Declarant

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WASHINGTON, DC 20037

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Envelope ID: 72310497

Status as of 2/3/2023 11:37 AM CST

Associated Case Party: Bradley Iles

Name	BarNumber	Email	TimestampSubmitted	Status
Dennis L. Richard		dennisrichardlaw@gmail.com	1/31/2023 2:38:35 PM	SENT
Maribel Susil		maribel.legal@outlook.com	1/31/2023 2:38:35 PM	SENT

CAUSE NO. 2023CI01354

BRADLEY ILES,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	
	§	37^h JUDICIAL DISTRICT
COGENT COMMUNICATIONS,	§	
INC., d/b/a COGENT	§	
COMMUNICATIONS	§	
	§	
Defendant.	§	BEXAR COUNTY, TEXAS

DEFENDANT’S ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFF’S ORIGINAL PETITION

Defendant Cogent Communications, Inc., d/b/a Cogent Communications (“Cogent” or “Defendant”) files its Original Answer and Affirmative Defenses in response to the Plaintiff’s Original Petition and respectfully shows the Court as follows:

I. GENERAL DENIAL

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant denies each and every allegation contained in Plaintiff’s Original Petition and demand strict proof therefore. Cogent reserves the right to amend and plead further, should such additional pleadings subsequently prove to be either desirable or necessary.

II. AFFIRMATIVE DEFENSES

1. Defendant asserts its entitlement to any allowable credits or offsets against a judgment, if any, in favor of Plaintiff.

2. Defendant invokes all applicable damages caps or limitations, including but not limited to the limitations set forth in Tex. Civ. Prac. & Rem. Code §41.008 and/or any other applicable statutory damages caps available under Texas law.

3. Defendant claims its entitlement to recover attorneys' fees and costs of suit.

4. Any recovery on Plaintiff's Petition, in whole or in part, is barred because Defendant's conduct was based on legitimate, non-retaliatory business reasons and was not based upon any reason in violation of public policy or other factors protected by law.

5. Any recovery on Plaintiff's Petition, in whole or in part, is barred because Defendant's conduct was taken in good faith and/or justified under all applicable laws. Consequently, Plaintiff is precluded from recovering any amounts as punitive/exemplary damages.

6. Defendant asserts that Plaintiff's claims for relief are barred to the extent they exceed that available under Texas law.

7. Plaintiff is barred from recovering from Defendant to the extent he has failed to mitigate damages.

8. If any improper, illegal, discriminatory, or retaliatory acts were taken by any of Defendant's employees against Plaintiff, then such conduct was outside the course and scope of that employee's employment, contrary to Defendant's policies, and was not ratified, confirmed, or approved by Defendant. Thus, any such actions cannot be attributed or imputed to Defendant.

9. Defendant asserts its right to utilize the after-acquired evidence doctrine upon the exercise of discovery.

10. If Plaintiff can establish that any discrimination occurred, which Defendant denies, Defendant asserts that it would have taken the same action with regard to Plaintiff even if any discriminatory motive existed.

11. Plaintiff's claims are barred, in full or in part, by his failure to utilize Defendant's anti-discrimination policies to the extent the alleged harm could have been avoided if he had.

12. In addition to the foregoing defenses, Defendant reserves the right to assert any other defenses available upon the completion of discovery and in compliance with the Texas Rules of Civil Procedure and any applicable scheduling order.

III. PRAYER

ACCORDINGLY, Defendant respectfully requests that Plaintiff have and take nothing by reason of his actions, that Defendant have judgment for its costs in this proceeding, and the Court grant such other and further relief that Defendant may show itself justly entitled to receive in both equity and law.

Dated: February 21, 2023

Respectfully submitted,

/s/ Mitchell F. Boomer

Mitchell F. Boomer

Texas Bar No. 24127463

Mitchell.Boomer@jacksonlewis.com

Jheris R. Jordan

Texas Bar No. 24097905

Jheris.Jordan@jacksonlewis.com

JACKSON LEWIS P.C.

93 Red River Street, Suite 1150

Austin, Texas 78701

Telephone: (512) 362-7100

Facsimile: (512) 362-5574

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on February 21, 2023 in accordance with the Texas Rules of Civil Procedure, on counsel of record as follows:

Dennis L. Richard
LAW OFFICE OF DENNIS L. RICHARD
14255 Blanco Road
San Antonio, Texas 78216
Email: dennisrichardlaw@gmail.com

ATTORNEY FOR PLAINTIFF

/s/ Mitchell F. Boomer
Mitchell F. Boomer

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Crystal Aranda on behalf of Mitchell Boomer
 Bar No. 24127463
 crystal.aranda@jacksonlewis.com
 Envelope ID: 72960263
 Status as of 2/23/2023 12:32 PM CST

Associated Case Party: Bradley Iles

Name	BarNumber	Email	TimestampSubmitted	Status
Dennis L. Richard		dennisrichardlaw@gmail.com	2/21/2023 2:34:19 PM	SENT
Maribel Susil		maribel.legal@outlook.com	2/21/2023 2:34:19 PM	SENT

Associated Case Party: Cogent Communications, Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
Austin Docketing		AustinDocketing@jacksonlewis.com	2/21/2023 2:34:19 PM	SENT
Crystal Aranda		Crystal.Aranda@jacksonlewis.com	2/21/2023 2:34:19 PM	SENT
Jheris Jordan		Jheris.Jordan@jacksonlewis.com	2/21/2023 2:34:19 PM	SENT
Mitchell Boomer		mitchell.boomer@jacksonlewis.com	2/21/2023 2:34:19 PM	SENT